


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
JAN 04 2008

CLERK

SHAWN BURNETTE,

CIV 09-3024

Petitioner,

-VS-

ORDER DENYING
CERTIFICATE OF APPEALABILITY

UNITED STATES OF AMERICA,

Respondent.

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

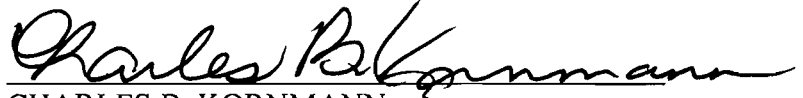
Petitioner pleaded guilty to conspiracy to distribute and possession with intent to distribute methamphetamine and was sentenced on February 20, 2007, to 188 months custody. He filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The basis of petitioner's motion was his contention that counsel was ineffective in (1) failing to conduct a pre-trial investigation, review discovery, file pre-trial motions, or challenge the admissibility of witness testimony, (2) failing to employ a "good conduct" defense trial strategy, (3) inducing petitioner to plead guilty, (4) and advising petitioner to plead guilty to an open plea. Petitioner further contended that there was a violation of Fed. R. Crim. P. 32(c)(2). Finally, petitioner contended that his sentence was improperly enhanced for conduct outside the scope of the indictment. I summarily denied the motion to vacate pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts.

Petitioner has filed a notice of appeal. The notice of appeal may be treated as an application for a certificate of appealability. Tiedeman v. Benson, 122 F.3d 518 (8th Cir. 1997). Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Petitioner did not and has not made a substantial showing of the denial of a constitutional right.

IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's § 2255 motion. Petitioner's application for a certificate of appealability is denied. This in no way hampers the petitioner's ability to request issuance of the certificate by a circuit judge pursuant to Fed. R. App. P. 22.

Dated this 4th day of January, 2010.

BY THE COURT:

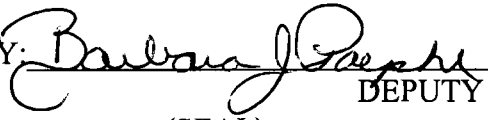


CHARLES B. KORNMANN

United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:  DEPUTY
(SEAL)